

Section 3

Monitoring for Compliance: Juvenile Facilities

3.1 Definitions Related to Juvenile Facilities

Secure juvenile detention center or correctional facility. A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders. Many states use the term “training school” for juvenile correctional facilities.

Secure custody. As used to define a detention or correctional facility, this term includes residential facilities that include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures.

Staff secure facility. A staff secure facility is as a residential facility which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; which may establish reasonable rules restricting entrance to and egress from the facility; and in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

Facilities that contain doors with delayed egress devices that have received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located are also considered to be staff secure. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.¹¹

¹¹ This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an “approved supervised automatic fire detection system or approved supervised automatic sprinkler system.”

Status offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- ◆ Truancy.
- ◆ Violations of curfew.
- ◆ Runaway.
- ◆ Underage possession and/or consumption of tobacco products.
- ◆ Underage alcohol offenses. These offenses are considered to be status offenses, even though state law or local ordinance may classify them as delinquent offenses.¹²

Nonoffender. A nonoffender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

3.2 Compliance With Deinstitutionalization of Status Offenders

Secure Holding of Status Offenders—Prohibitions and Exceptions

The JJDP Act provides that status offenders, nonoffenders, and civil-type offenders not be detained or confined in secure detention or correctional facilities. There may be rare situations, however, where short-term secure custody of accused status offenders may be necessary. For example, detention in a juvenile facility for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be necessary. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter

¹² With regard to underage alcohol offenses, in many states it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

care placement. Therefore, OJJDP regulations allow a facility to hold an accused status offender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent offenders for their failure to appear.

Status offenders cannot be securely detained after adjudication unless all of the conditions of the VCO Exception (see below) are met. Juveniles who have committed a violation of the Youth Handgun Safety Act or are held in accordance with the Interstate Compact on Juveniles as enacted by the state are excluded from the DSO requirement in total.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act (18 U. S. C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x), or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report.

Out-of-State Runaways

Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a want, warrant, or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the deinstitutionalization of status offenders requirement. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total.

Federal Wards

The JJDP Act states that “ juveniles . . . who are aliens shall not be placed in secure detention facilities or secure correctional facilities.” Federal wards held beyond 24 hours in state and local secure detention and correctional facilities pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer, or appearance as a material witness, or for return to their lawful residence or country of citizenship must be

reported as violations of the deinstitutionalization of status offenders requirement.¹³

Exception for Status Offenders Who Violate a Valid Court Order (VCO Exception)

The VCO Exception provides that adjudicated status offenders found to have violated a valid court order may be securely detained in a juvenile detention or correctional facility. The JJDP Act of 2002 defines a valid court order as a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.¹⁴ It is important to note that status offenders who violate a valid court order cannot be held securely in an adult jail or lockup for any length of time.

For the VCO Exception to apply, the Act requires that the following actions occur when a status offender is taken into custody for violating a valid court order:

- ◆ An appropriate public agency must be promptly notified that the juvenile is held in custody for violating the order;
- ◆ Not later than 24 hours during which the juvenile is held, an authorized representative of the agency shall interview, in person, the juvenile; and
- ◆ Not later than 48 hours during which the juvenile is held:
 - ▶ The representative must submit an assessment to the court that issued the order regarding the immediate needs of the juvenile; and
 - ▶ The court shall conduct a hearing to determine whether there is reasonable cause to believe that the juvenile violated the order and the appropriate placement of the juvenile pending disposition of the alleged violation.

In the event the court orders the juvenile detained pending the disposition, the disposition hearing should be held as soon as possible while still allowing reasonable time for the court to obtain additional information to enable it to make a disposition in the best interest of the status offender.

Because the JJDP Act does not provide substantive legal authority to a state, where state legislation currently prohibits the secure confinement of status offenders who violate a valid court order, legislative amendment would be required if a state wanted to have the ability to

¹³ Because state and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

¹⁴ 42 U.S.C. 5603 Sec 103 (16).

confine status offenders who violate valid court orders.

Although some states' common laws or statutes allow the courts to use traditional contempt power, failure to appear, or probation violation to upgrade a status offender to a delinquent offender, a status offender held for violating a valid court order remains a status offender, and the VCO Exception process must be followed, unless the violation itself is a delinquent act as defined under federal law.

To demonstrate compliance with the process governing the VCO Exception, the state must report in its annual compliance monitoring report the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO Exception. The state must have a system in place to verify whether court orders used to hold status offenders in juvenile detention centers comply with the conditions listed above. At a minimum, the state must randomly verify 10 percent of all adjudicated status offenders held securely because of violating a valid court order. If a system is not in place to monitor compliance with the conditions and process governing the VCO Exception, all uses of the VCO Exception must be reported as violations of DSO.

3.3 Compliance With Jail Removal

A collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water, and sewer). Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the collocated facility criteria (see section 4).

3.4 Compliance With Separation

Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

It is important to note that the separation requirement prohibits a state from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. For example, an adult could not be transferred to a juvenile detention center to alleviate overcrowding in an adult jail.

Inmate trustees who perform maintenance or other duties at a juvenile detention center or juvenile training school must be sight and sound separated from the juvenile detainees at all times. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. The state

must monitor all juvenile detention facilities and juvenile training schools for separation.

Transferred, Waived, or Certified Youth

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile “alleged to be or found to be delinquent” (he or she has been charged with a criminal, not a delinquent act) and the youth is not an “adult inmate.” Once the youth reaches the state’s age of majority, he or she must be separated from the juvenile population within 6 months.

Adults Under the Jurisdiction of the Juvenile Court

An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been “convicted of a crime or is awaiting trial on criminal charges.”

3.5 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the state. The state must conduct regular onsite visits to monitor the facilities and verify reported data. To demonstrate compliance with the JJDP Act, secure juvenile detention or correctional facilities must report the following:

- ◆ Dates covered by the reporting period, as designated by the state monitoring agency.
- ◆ The total number of nonoffenders held in a secure detention or correctional facility for any length of time.
- ◆ The total number of accused status offenders, out-of-state runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for longer than 24 hours (exclusive of weekends and legal holidays) prior to an initial court appearance and for an additional 24 hours (exclusive of weekends and legal holidays) immediately following an initial court appearance. Exclude those juveniles held pursuant to the VCO Exclusion provision, pursuant to the Youth Handgun Safety Act or a similar state law or the Interstate Compact on Juveniles adopted by the state.
- ◆ The total number of adjudicated status offenders and nonoffenders, including out-of-State

runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for any length of time, excluding those held pursuant to the VCO Exception provision or pursuant to the Youth Handgun Safety Act or the Interstate Compact on Juveniles adopted by the state

- ◆ The total number of juveniles not separated from adult criminal offenders.
- ◆ The state monitoring agency is also required to collect the following:
 - ▶ The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.
 - ▶ Total number of federal wards.

Summary of the JJDP Act: Juvenile Detention or Correctional Facilities	
	Secure Juvenile Detention or Juvenile Correctional Facility
Nonoffenders	Secure holding prohibited.
Accused juvenile status offender	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Juvenile must be interviewed by an appropriate public agency within 24 hours of being placed in secure custody. The court must receive an assessment from the public agency and the juvenile must have a reasonable cause hearing within 48 hours of being placed in secure custody. Time limits exclude weekends and holidays.
Status offender adjudicated for violating a valid court order	No restrictions on holding.
Accused juvenile delinquent	No restrictions on holding.
Adjudicated juvenile delinquent	No restrictions on holding.
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding.
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding.
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.
Adult accused of or convicted of a criminal offense	Secure holding prohibited.